

No. 5724

1615
United States 1609

Circuit Court of Appeals

For the Ninth Circuit.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Petitioner,

vs.

JOHN H. ROSSETER,

Respondent.

Transcript of Record.

UPON PETITION TO REVIEW AN ORDER OF THE UNITED
STATES BOARD OF TAX APPEALS.

FILED

MAR 1 - 1900

PAUL B. MERRILL

United States
Circuit Court of Appeals

For the Ninth Circuit.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Petitioner,

vs.

JOHN H. ROSSETER,

Respondent.

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UPON PETITION TO REVIEW AN ORDER OF THE UNITED
STATES BOARD OF TAX APPEALS.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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[1*] DOCKET 6179.

JOHN H. ROSSETER, 354 Pine Street, San Francisco, Calif.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

For the Taxpayer:

HILLYER BROWN, Esq.

For the Commissioner:

G. G. WITTER, Esq.

DOCKET ENTRIES.

1925.

Aug. 12—Petition received and filed.

“ 14—Copy of petition served on Solicitor.

“ 14—Notification of receipt mailed taxpayer.

Sept. 1—Answer filed by Solicitor.

“ 9—Copy of answer served on taxpayer. Assigned to Field Calendar.

1927.

Feb. 26—Hearing date set for 5-3-27 at San Francisco.

May 3—Hearing had before Mr. Van Fossan.
Briefs due 6-15-27 without exchange.

June 13—Brief filed by taxpayer.

“ 24—Transcript of hearing 5-3-27 filed.

*Page-number appearing at the top of page of original certified Transcript of Record.

1928.

Mar. 30—Findings of fact and opinion rendered.
Judgment for petitioner.

April 13—Ordered that decision be *review* by
Board—entered.

May 31—Findings of fact and opinion rendered.
Judgment for petitioner.

“ 31—Order of redetermination entered.

Nov. 15—Petition for review by U. S. Cir. Court
of Appeals, 9th Circuit, with assign-
ments of error filed by G. G.

Dec. 3—Proof of service filed by G. C.

1929.

Jan. 3—Praeipce filed by G. C.

“ 4—Motion for extension to 2-1-29 for prep-
aration, transmission and delivery of
record papers to Court of Appeals filed
by G. C.

“ 7—Order enlarging time to 2-1-29 for
preparation of evidence and delivery
of record entered.

“ 31—Order enlarging time to 2-15-29 for
filing transcript of record entered.

Feb. 5—Proof of service of praecipce filed by
G. C.

Now, February 6, 1929, the foregoing docket
entries certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

DOCKET No. 6179.

Appeal of JOHN H. ROSSETER, 354 Pine Street,
San Francisco, California.

PETITION.

The above-named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter having Bureau symbols IT:PA:4-60-D dated June 16, GWF-406 1925, and as the basis of his appeal sets forth the following:

I.

The taxpayer is a citizen of the United States of America and a resident of the State of California, and his address is 354 Pine Street, San Francisco, California.

II.

The deficiency letter, a copy of which is attached hereto and marked Exhibit "A," was mailed to the taxpayer on June 16, 1925 and states a deficiency of \$11,358.98.

III.

The taxes in controversy are income and profits taxes for the calendar year 1920 and are more than \$10,000, to wit, \$11,358.98 plus \$382.64. The amount of the deficiency was originally \$12,543.10 but the taxpayer filed a claim for refund for \$382.64, claiming a deduction in net income of \$2799.34, [3] made up of one item of \$2,612.00 and a second item of \$187.34. The Commissioner conceded the

correctness of this claim, but in view of the deficiency assessment, the Commissioner rejected the claim and reduced the deficiency assessment from \$12,543.10 to \$11,358.98, a reduction of \$1,184.12. The difference between the claim for refund of \$382.64 (which is figured on a reduction of \$2,799.34 in net income) and the reduction in the deficiency assessment of \$1,184.12 (which is likewise figured on a reduction of \$2,799.34 in net income) is explained by the fact that the former is based on a net income which is smaller by \$50,000 (the item which is the subject of this appeal) than the net income on which the latter is based. Accordingly, if this appeal is decided in favor of the Commissioner, the taxpayer should pay the present deficiency assessment of \$11,358.98, but if this appeal is decided in favor of the taxpayer, the deficiency assessment should be wiped out and the taxpayer should receive a refund of \$382.64. Copies of a letter and of a statement, from the Commissioner, conceding the correctness of the reduction in net income of \$2,612.00 and \$187.34, or a total of \$2,799.34, are attached hereto and marked Exhibit "B" and Exhibit "C," respectively.

IV.

The determination of tax contained in the said deficiency letter is based upon the following error:

The Commissioner has increased the taxable income of the taxpayer by the amount of \$50,000.00, which amount was received by the taxpayer as a gift from the Sperry Flour Company.

[4] V.

The facts upon which the taxpayer relies as the basis of his appeal are as follows:

(a) The taxpayer acted as president of the Sperry Flour Company from August, 1910 until August, 1922.

(b) During all of that time the taxpayer received a salary of \$6,000 a year from the Sperry Flour Company, which was the full compensation provided for by his contract of employment with it.

(c) During all that time he devoted only one or two hours a day to the affairs of the Sperry Flour Company, being occupied with other interests the rest of the time.

(d) In 1920, during the course of his tenth year of service, some of the stockholders and directors of Sperry Flour Company wished to make a gift to him, but it was recognized that directors have not the power to make gifts with corporation funds and that it would be necessary for the stockholders to authorize the action. Accordingly at the annual meeting of stockholders, held on August 16, 1920, the following proceedings were had, as appears from the minutes of the meeting:

“Director Wm. H. Crocker addressed the stockholders and gave a very interesting *résumé* of the affairs of the Company since its reorganization in 1910. He said the marked success of the Company since that date was due to the able and successful direction of its affairs by President J. H. Rosseter, and suggested that as evidence of the appreciation of the stock-

holders for the very efficient and valuable services rendered to the Company, that President Rosseter be voted a gift of Fifty Thousand (50,000) Dollars.

“Thereupon on motion of D. B. Moody seconded by Charlotte E. Sperry the stockholders by unanimous vote instructed the Board of Directors to authorize [5] the payment of Fifty Thousand (\$50,000) Dollars as a gift to John H. Rosseter in recognition of his able and successful direction of the affairs of the Company during the past ten years.”

(e) Pursuant to this authorization the directors passed the following resolution, also on August 16, 1920:

“WHEREAS, at the annual meeting of the stockholders of Sperry Flour Company held on this 16th day of August, 1920, it was unanimously resolved that a gift in the sum of Fifty Thousand (50,000) Dollars be made by said Sperry Flour Company to J. H. Rosseter, the president of said Company, in recognition of his able and successful direction of its affairs during the past ten years.

“RESOLVED: that this Board of Directors approve the action so taken by the stockholders of said Company at said meeting, and hereby directs the payment of the sum aforesaid to the said J. H. Rosseter in accordance with the said resolution.

“RESOLVED FURTHER that this Board of Directors tenders its congratulations to the

said J. H. Rosseter upon this the tenth anniversary of his election to the presidency of said Company, and its appreciation of his able and successful direction of its affairs during the occupancy of said office.”

(f) There had never been any mention or understanding of any kind between the taxpayer and any of the directors or stockholders concerning the payment to him of any money or other property in excess of his salary.

(g) The taxpayer had not heard (prior to August 16, 1920) of any proposal to make this gift and it came as a complete surprise to him on that day.

(h) It was the intention of both stockholders and directors to make an out-and-out gift of this \$50,000 to the taxpayer. The payment was made and accepted as such.

(i) This intention to make a gift was in no way influenced by T. B. M. 86. Neither the stockholders nor directors [6] nor any of them had ever heard of this ruling at the time of making the payment.

(j) The Sperry Flour Company did not deduct this amount of \$50,000 from its gross income on its income tax return for the year 1920, or for any other year.

(k) The intention of the stockholders and directors of Sperry Flour Company to make a gift of this \$50,000 was in no way influenced by the fact that the corporation had no taxable income for the taxable year in question, for the reason that the

Sperry Flour Company reported its income tax not on the basis of the calendar year, but on the basis of its fiscal year beginning July 1, so that it was impossible to tell at the time the \$50,000 was given, (which was only a month and a half after the beginning of the taxable year) whether the corporation would have any net income for the year or not, and furthermore the corporation showed a large net income for the month and a half of the taxable year which preceded the payment.

(1) The taxpayer did absolutely nothing for the Sperry Flour Company, or its stockholders or its directors, or any of them, before or after the payment of this \$50,000, that he was not legally required to do under the terms of his contract of employment with the Sperry Flour Company.

VI.

The taxpayer in support of his appeal relies upon the following propositions of law:

Under the Revenue Act of 1918 amounts received by taxpayers as gifts are exempt from taxation.

[7] WHEREFORE, the taxpayer respectfully prays that this Board may hear and determine his appeal.

HUGH GOODFELLOW,
HILLYER BROWN,

823 Insurance Exchange Building, San Francisco,
California,

Attorneys for Taxpayer.

State of New York,
County of New York,—ss.

John H. Rosseter, being duly sworn, says: That

he is the taxpayer named in the foregoing petition; that he has read the said petition and is familiar with the statements therein contained, and that the facts therein stated are true.

JOHN H. ROSSETER.

Sworn to before me this 10th day of August, 1925.

[Seal]

W. F. McDERMOTT,

Notary Public, N. Y. Co. Clerk's No. 31, N. Y.

Co. Register No. 7020.

Commission Expires Mar. 30, 1927.

[8] EXHIBIT "A."

TREASURY DEPARTMENT,

Washington.

IT:PA:4-60-D

GWF-406

Jun. 16, 1925

Mr. John H. Rosseter,

332 Pine Street,

San Francisco, California.

Sir: The determination of your tax liability for the taxable year 1920, as set forth in office letter of April 28, 1925, disclosing a deficiency in tax amounting to \$12,543.10, has been reduced to \$11,358.98, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed 60 days from the date of mailing of this letter within which to file an appeal to the United States Board of Tax Appeals contesting in whole or in part the correctness of this determination.

Where a taxpayer has been given an opportunity to appeal to the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the inclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:PA:4-60-D GWF-406. In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

D. H. BLAIR,
Commissioner.

By J. G. BRIGHT,
Deputy Commissioner.

Inclosures:

Statements.

Agreement—Form A.

[9] EXHIBIT "B."

TREASURY DEPARTMENT,
Washington.

IT:PA:4
GWF-406.

Jun. 15, 1925.

Mr. John H. Rosseter,
332 Pine Street,
San Francisco, California.

Sir: Your claim for the refunding of \$382.64 individual income tax for the year 1920, has been examined.

The claim is based upon the statement that additional depreciation of \$2,612.00 should be allowed and income of \$187.34 reported by the Revenue Agent should be eliminated inasmuch as the property from which the income was received is held in trust.

Your net income as shown in the Revenue Agent's report has been reduced by \$2,612.00 depreciation and \$187.34 income erroneously reported and as a result of these adjustments, the deficiency has been reduced to \$11,358.98.

Inasmuch as there is due a deficiency in tax, there is no over-assessment and your claim will be rejected.

The rejection will officially appear on the next list to be approved by the Commissioner.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By A. LEWIS,
Head of Division.

[10] EXHIBIT "C."

STATEMENT.

IT:PA:4-60-D.

GWF-406.

In re: Mr. JOHN H. ROSSETER, 332 Pine Street, San Francisco, California.

1920—Deficiency in Tax—\$11,358.98.

The adjustment disclosed in office letter of April 28, 1925, showing the deficiency of \$12,543.10 as the result of the audit and investigation of your tax liability, as set forth in the Revenue Agent's report dated March 25, 1925, has been changed in view of the information contained in your claim.

Additional depreciation of \$2,612.00 has been allowed and the income of \$187.34 representing property held in trust has been eliminated from your return.

The adjustment of these items discloses a deficiency in tax amounting to \$11,358.98.

Payment of the deficiency in tax should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

Now, February 6, 1929, the foregoing petition certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[11] Filed Sep. 1, 1925. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 6179.

Appeal of JOHN H. ROSSETER, San Francisco, Calif.

ANSWER.

The Commissioner of Internal Revenue, by his attorney, A. W. Gregg, Solicitor of Internal Revenue, for answer to the petition of this taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraphs 1 and 2 of the petition.

(2) With reference to the allegations contained in paragraph 3, admits that the original deficiency determined against the taxpayer for the year 1920 was \$12,543.10, and admits that that amount was reduced, as announced in the letter of June 16, 1925, addressed to the taxpayer, to the sum of \$11,358.98, and alleges that the latter amount is the only amount in controversy in this appeal.

(3) With reference to the allegations contained in paragraph 5 of the petition, admits paragraphs 5(a) and 5(b).

Specifically denies the allegations contained in paragraph 5(c).

With reference to the allegations contained in paragraph 5(d), admits that at the annual meeting of the stockholders of the Sperry Flour Company held on August 16, 1920, the resolution set out in said paragraph was duly passed.

Admits the allegations contained in paragraph 5(e).

[12] Specifically denies the allegations contained in paragraphs 5(f), 5(g), 5(h), 5(i), 5(j), 5(k), and 5(l).

(4) Specifically denies all allegations contained in the petition not hereinabove expressly admitted to be true.

PROPOSITION OF LAW.

Money received in consideration of valuable services rendered is not a gift exempt from payment of income tax, but is a part of the recipient's taxable income.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

A. W. GREGG,
Solicitor of Internal Revenue,
Attorney for Commissioner of Internal Revenue.

Of Counsel:

GEORGE G. WITTER,
Special Attorney,
Bureau of Internal Revenue.

Now, February 6, 1929, the foregoing answer certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[13] United States Board of Tax Appeals.

DOCKET No. 6179.

Promulgated May 31, 1928.

JOHN H. ROSSETER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Payment to president of corporation *held* to be a gift.

HILLYER BROWN, Esq., for the Petitioner.

GEORGE G. WITTER, Esq., for the Respondent.

Petitioner contests a deficiency of \$11,358.98 determined by the respondent for the year 1920, alleging error in the addition to income of \$50,000 paid to petitioner by a corporation of which he was president.

FINDINGS OF FACT.

Petitioner is a resident of California and during the years 1910 to 1922 was president of Sperry Flour Company. At the annual meeting of the stockholders of Sperry Flour Company, held

August 16, 1920, a resolution, with prefatory statement, was adopted, as follows:

Director Wm. H. Crocker addressed the stockholders and gave a very interesting *résumé* of the affairs of the Company since its reorganization in 1910. He said the marked success of the Company since that date was due to the able and successful direction of its affairs by President J. H. Rosseter, and suggested that as evidence of the appreciation of the stockholders for the very efficient and valuable services rendered to the company, that President Rosseter be voted a gift of Fifty Thousand (50,000) Dollars.

Thereupon on motion of D. B. Moody seconded by Charlotte E. Sperry the stockholders by an unanimous vote instructed the Board of Directors to authorize the payment of Fifty Thousand (\$50,000) Dollars as a gift to John H. Rosseter in recognition of his able and successful direction of the affairs of the Company during the past ten years.

Upon motion duly made and seconded Vice-President McNear appointed W. H. Orrick and Austin Sperry a committee to draw up a letter of congratulation to accompany the gift.

Pursuant to the authorization, the board of directors on the same date passed the following resolution:

A true copy:

[Seal]

Teste: B. D. GAMBLE,
Clerk U. S. Board of Tax Appeals.

[14] WHEREAS, at the annual meeting of the stockholders of Sperry Flour Company held on this 16th day of August, 1920, it was unanimously resolved that a gift in the sum of Fifty Thousand (50,000) Dollars be made by said Sperry Flour Company to J. H. Rosseter, the president of said Company, in recognition of his able and successful direction of its affairs during the past ten years.

RESOLVED: That this Board of Directors approve the action so taken by the stockholders of said company at said meeting, and hereby directs the payment of the sum aforesaid to the said J. H. Rosseter in accordance with the said resolution.

RESOLVED, FURTHER that this Board of Directors tenders *it* congratulations to the said J. H. Rosseter upon this the tenth anniversary of his election to the presidency of said Company, and its appreciation of his able and successful direction of its affairs during the occupancy of said office.

The sum of \$50,000 was paid to petitioner on August 17, 1920, and on the books of the corporation the item was charged to the surplus account. In the tax return of the corporation the sum was not claimed as an expense deduction but appeared in its reconciliation of the change in surplus as "bonus to J. H. Rosseter." Petitioner received from the Sperry Flour Company during each of the years he served as president the sum of \$6,000, which was the full compensation provided for by

his contract of employment. He devoted approximately one-fourth of his time to the interests of this company.

During part of the time between 1910 and 1922 and while petitioner was president of Sperry Flour Company he was also director and Pacific Coast manager for W. R. Grace Company and vice-president and general manager of the Pacific Mail Steamship Company. During part of 1918 and most of 1919 petitioner was director of operations of the U. S. Shipping Board and a trustee of the Emergency Fleet Corporation. He was absent from California for long periods of time and during such absence devoted only slight attention to the affairs of Sperry Flour Company. During petitioner's service as president the operations of the company were profitable and its profits were greatly increased.

[15] OPINION.

VAN FOSSAN.—Whether or not a payment is a gift under the law depends upon the intention of the parties and the facts and circumstances surrounding the transaction. Counsel for respondent, addressing himself to the question of intention, observed at the hearing that “the corporate resolution is the best evidence and speaks for what the intention was.” In the absence of facts or circumstances which discredit the intention expressed by the corporate resolution, it is certainly entitled to great weight. Applying such a test here the intention to make a gift is clear and conclusive, nor do

we find anything in the record to negative the intention expressed by both the stockholders and the directors of the corporation. On the contrary there is much in corroboration.

The corporation charged the payment to surplus rather than as an expense and in its tax return did not claim the payment as a deduction from income. The payment was authorized by the action of both the stockholders and the directors. Petitioner devoted only part of his time to the corporation and had completed ten years of successful incumbency in the office of president.

The facts in this case are even more favorable to the petitioner than those in *David R. Daly*, 3 B. T. A. 1042, in which case we held the payment to be a gift. The facts also clearly distinguish the case from *John H. Parrott*, 1 B. T. A. 1, relied on by respondent.

The respondent was in error in adding the payment to income.

Reviewed by the Board.

Judgment will be entered for the petitioner.

[16] MURDOCK, Dissenting.—The so-called “gift” received by Rosseter was, in the final analysis, compensation received for services. Whether it was for past, present, or future services, or whether elements of each formed part of the consideration, it was income within the meaning of that term as used in the Revenue Act. *Eisner vs. Macomber*, 252 U. S. 189; *Bowers vs. Kerbaugh Empire Co.*, 271 U. S. 170; *Noel vs. Parrott*, 15

Fed. (2d) 669; and Cora B. Beatty, Exec., 7 B. T. A. 726.

STERNHAGEN and SIEFKIN agree with this dissent.

Now, February 6, 1929, the foregoing findings of fact and opinion certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[17] United States Board of Tax Appeals,
Washington.

DOCKET No. 6179.

JOHN H. ROSSETER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER OF REDETERMINATION.

Pursuant to the Board's findings of fact and opinion, promulgated May 31, 1928, IT IS ORDERED AND DECIDED: That, upon redetermination, there is no deficiency for the year 1920.

Entered May 31, 1928.

(Signed) ERNEST H. VAN FOSSAN,
Member, United States Board of Tax Appeals.

Dated: Washington, D. C.

Now, February 6, 1929, the foregoing order of redetermination certified from the record as a true copy.

[Seal]

D. B. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

A true copy.

Teste: B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[18] Filed Nov. 15, 1928.

United States Board of Tax Appeals.

DOCKET No. 6179.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Petitioner on Review,
vs.

JOHN H. ROSSETER,

Respondent on Review.

PETITION FOR REVIEW BY THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT AND AS-
SIGNMENTS OF ERROR.

Comes now David H. Blair, Commissioner of Internal Revenue, by his attorneys, Mabel Walker Willebrandt, Assistant Attorney General, and C. M. Charest, General Counsel, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified, and acting Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States; that John T. Rosseter is and during the taxable year 1920, was an inhabitant of the State of California, which is within the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit.

II.

The nature of the controversy is as follows, to wit:

The taxes involved are income taxes of John H. Rosseter, an individual, for the year 1920. The Commissioner of Internal Revenue on June 16, 1925, mailed to the taxpayer a deficiency notice asserting a deficiency in income taxes against the taxpayer for the year 1920 in the amount of \$11,358.98. The taxpayer on August 12, 1925, filed with the United States [19] Board of Tax Appeals his petition. Subsequently the Commissioner filed an answer and the case was heard on May 3, 1927. The Board of Tax Appeals rendered its opinion on May 31, 1928, and entered its final order of redetermination on May 31, 1928, which determined that there was no deficiency.

The question involved is whether a payment of \$50,000 made by a corporation of which the taxpayer was president, to him in 1920, was a gift.

The taxpayer during the years 1910 to 1922 was president of the Sperry Flour Company. At the annual meeting of the stockholders of the company on August 16, 1920, one of the directors stated that

the marked success of the company since its reorganization in 1910, was due to the able and successful direction of its affairs by the taxpayer and suggested "that as evidence of the appreciation of the stockholders for the very efficient and valuable services rendered to the company, that President Rosseter be voted a gift of Fifty Thousand (50,000) Dollars." Thereupon the stockholders instructed the Board of Directors to authorize the payment of \$50,000 "as a gift to John H. Rosseter in recognition of his able and successful direction of the affairs of the company during the past ten years."

The Board of Directors on the same date passed a resolution by which it was unanimously resolved that "a gift in the sum of Fifty Thousand (50,000) Dollars be made by said Sperry Flour Company to J. H. Rosseter, the president of said company, in recognition of his able and successful direction of its affairs during the past ten years."

The sum of \$50,000 was paid to the taxpayer on August 17, 1920, and on the books of the corporation the item was charged to surplus account. [20] The taxpayer had received from the Sperry Flour Company during each of the years he served as president, the sum of \$6,000.00.

The taxpayer contended that the \$50,000.00 was a gift from the corporation to him and as such was not taxable income. The Commissioner contended that the sum was paid in consideration of the taxpayer's past services to the company and that as such it was taxable income.

The Board of Tax Appeals held that the payment of the \$50,000 was a gift and not taxable income.

III.

That the said Commissioner being aggrieved by the findings of fact and conclusions of law contained in the said decision and by the said order of redetermination, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit;

WHEREFORE, he petitions that a transcript of record be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Second Circuit and be transmitted to the Clerk for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

The said Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in not approving the deficiency determined by the Commissioner.
2. The Board of Tax Appeals erred in holding that the payment to the taxpayer was a gift.
3. The Board of Tax Appeals erred in not holding that the payment of \$50,000.00 to the taxpayer

in the year 1920 was taxable income to him [21]
in that year.

(Signed) MABEL WALKER WILLE-
BRANDT,

Assistant Attorney General.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel:

CLARK T. BROWN,
Special Attorney, Bureau of Internal Revenue.

VERIFICATION.

United States of America,
District of Columbia,—ss.

C. M. Charest, being duly sworn, says that he is General Counsel for the Bureau of Internal Revenue and as such is duly authorized to verify the above and foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review and is familiar with the statements therein contained and that the facts therein stated are true, except such facts as may be stated on information and belief and those facts he believes to be true.

(Signed) C. M. CHAREST.

Sworn and subscribed to before me this 14th day
of November, A. D. 1928.

[Seal]

WILFORD H. PAYNE,
Notary Public.

CTB/spt.

My commission expires November 5th, 1932.

[22] Filed Dec. 3, 1928. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 6179.

DAVID H. BLAIR, Commissioner of Internal Revenue,

Petitioner on Review,
vs.

JOHN H. ROSSETER,

Respondent on Review.

NOTICE.

To: JOHN H. ROSSETER,

354 Pine Street,

San Francisco, California.

HILLYER BROWN,

c/o Orrick Palmer & Dahlquist,

Financial Center Building,

San Francisco, California.

Please take notice that the Commissioner of Internal Revenue did on the 15th day of November, 1928, file with the United States Board of Tax Appeals a petition for review of the decision of the said Board in the above-entitled cause by the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which petition for review is herewith served upon you.

(Signed) C. M. CHAREST.

(Signed) C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

Service of the foregoing notice and service of a copy of the petition for review mentioned in said notice is acknowledged this 21st day of November, A. D. 1928.

(Signed) HILLYER BROWN.
J. H. ROSSETER.

CTB/spt.

Now, February 6, 1929, the foregoing petition for review with proof of service certified from the record as a true copy.

[Seal]

B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

[23] Filed Jan. 3, 1929. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 6179.

DAVID H. BLAIR, Commissioner of Internal Revenue,

Petitioner on Review,
vs.

JOHN H. ROSSETER,

Respondent on Review.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of

Appeals for the Ninth Circuit, copies duly certified as correct, of the following documents and records in the above-entitled cause in connection with the petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of proceedings before the Board.
2. Pleadings before the Board.
3. Findings of fact and opinion promulgated May 31, 1928.
4. Order of redetermination.
5. Petition for review together with proof of notice of filing same.
6. This praecipe together with proof of notice of filing same.

(Signed) C. M. CHAREST.

C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

CLARK T. BROWN,

Special Attorney, Bureau of Internal Revenue.

CTB/spt.

[24] Filed Feb. 5, 1929. United States Board of Tax Appeals.

United States Board of Tax Appeals.

DOCKET No. 6179.

DAVID H. BLAIR, Commissioner of Internal
Revenue,

Petitioner on Review,
vs.

JOHN H. ROSSETER,

Respondent on Review.

NOTICE.

To: JOHN H. ROSSETER,
354 Pine Street,
San Francisco, California.

HILLYER BROWN,
c/o Orrick Palmer & Dahlquist,
Financial Center Building,
San Francisco, California.

You will please take notice that the Commissioner of Internal Revenue did on the 3d day of January, 1929, file with the United States Board of Tax Appeals a praecipe, a copy of which praecipe is herewith served upon you.

(Signed) C. M. CHAREST.

(Signed) C. M. CHAREST,

General Counsel, Bureau of Internal Revenue.

Of Counsel:

CLARK T. BROWN,
Special Attorney, Bureau of Internal Revenue.

Service of the foregoing notice and service of a copy of the praecipe mentioned in said notice is acknowledged this 26th day of January, A. D. 1929.

J. H. ROSSETER.

HILLYER BROWN.

Now, February 6, 1929, the foregoing praecipe with proof of service certified from the record as a true copy.

[Seal]

B. D. GAMBLE,

Clerk, U. S. Board of Tax Appeals.

[Endorsed]: No. 5724. United States Circuit Court of Appeals for the Ninth Circuit. David H. Blair, Commissioner of Internal Revenue, Petitioner, vs. John H. Rosseter, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed February 12, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.